

**NOTICE OF PROPOSED ADOPTION OF REGULATION AND  
STATEMENT OF REASONS**

**California Code of Regulations  
Title 2. Administration  
Division 1. Administrative Personnel  
Chapter 1. State Personnel Board**

**DATE:** December 20, 2002

**TO:** ALL STATE AND LOCAL AGENCIES, EMPLOYEE  
ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR'S  
CABINET

**SUBJECT:** Proposed Adoption of Title 2, California Code of  
Regulations § 63

The State Personnel Board (SPB) is proposing to adopt new Rule 63 to require that answers or appeals filed with SPB, requesting a hearing or investigation be conducted by SPB, notify the responding party of all affirmative defenses and requests for relief that the employee or applicant intends to raise during the course of the hearing or investigation. This proposed rule reflects SPB's response to public comments regarding a previous proposal to adopt Rule 63 that was heard before the five-member State Personnel Board (Board) on May 7, 2002.

**AUTHORITY:**

Under authority established in Government Code (GC) § 18701, SPB has proposed to adopt new § 63 of Title 2 of the California Code of Regulations (2CCR), to specify filing requirements when State employees or applicants for State employment file answers or appeals with SPB regarding investigations or hearings conducted by SPB concerning, but not limited to, Notices of Adverse Action (GC §§ 19575 and 19590), Notices of Rejection During Probationary Period (GC § 19175), Notices of Medical Action (GC § 19253.5), and Notices of Non-Punitive Action (GC § 19585). This new section will require that any such answer or appeal filed with SPB must specify any affirmative defenses the employee or applicant intends to raise during the course of the hearing or investigation, and any relief, including compensatory damages, the employee or applicant is seeking. The section will also provide for amended answers or appeals to be filed with SPB to include additional affirmative defenses or

requests for relief, provided that the appointing power or other responding party is afforded an opportunity to conduct discovery concerning the newly-raised affirmative defenses or requests for relief.

**REFERENCE:**

These regulations implement, interpret, and/or make specific GC §§ 18670, 18703, 19175, 19253.5, 19575, 19585 and 19590.

**PUBLIC HEARING:**

Date and Time: February 3, 2003, from 11:00 to 11:30 a.m.

Place: State Personnel Board  
801 Capitol Mall, Auditorium  
Sacramento, CA 95814

Purpose: To receive oral comments about this action.

**WRITTEN PUBLIC COMMENT PERIOD:**

The written public comment period will close February 3, 2003, at 5:00 p.m. Any person may submit written comments about the proposed regulatory changes at the hearing. To be considered by SPB, the person identified below must receive written comments before the close of the forty-five (45) day comment period.

Direct written comments to the agency contact person, Steve Unger, at the State Personnel Board (SPB), 801 Capitol Mall, MS 55, Sacramento, CA 95814, or to [sunger@spb.ca.gov](mailto:sunger@spb.ca.gov), or fax comments to his attention at (916) 653-1280.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/  
CONTACT PERSON:**

Copies of the express terms of the proposed action, Statement of Reasons, and all of the information upon which the proposal is based are available upon request from SPB's contact person. The rulemaking file is available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to the agency backup contact person, Elise Rose, at the State Personnel Board, (916) 653-1403 or TDD (916) 653-1498.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

If any substantial and sufficiently related changes are made to the text of the proposal as a result of comments received during the public comment period, SPB will make the full text of the changed regulation available for at least fifteen (15) days before the date the regulation is permanently adopted.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

GC § 18701 authorizes the five-member Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (GC §§ 18500 et seq.).

GC § 18670 authorizes SPB to hold hearings concerning all matters relating to the enforcement and effect of the Civil Service Act.

GC § 18703 authorizes SPB to provide processes for dismissals, demotions, suspensions, and other adverse action for or in the State civil service in accordance with Article VII of the Constitution of the State of California and the Civil Service Act.

GC § 19253.5 authorizes State employees who have been non-punitively dismissed from State service for medical reasons to file an appeal with SPB challenging the dismissal.

GC § 19575 authorizes State employees who have been punitively dismissed from State service for disciplinary reasons to file an answer with SPB appealing the dismissal.

GC § 19585 authorizes State employees who have been non-punitively dismissed from State service for failure to meet requirements for continuing employment to file an appeal with SPB challenging the dismissal.

GC § 19590 authorizes State managerial employees who have been punitively dismissed from State service for disciplinary reasons to file an appeal with SPB challenging the dismissal.

SPB is proposing to adopt new § 63 of 2CCR in order to:

1. Expedite the hearing or investigation process by timely notifying all parties to the hearing or investigation of all issues that will be presented during the course of the hearing or investigation, so that timely discovery can be conducted, thereby reducing or eliminating the need for continuances to be granted in the case as the result of affirmative defenses or requests for relief that would otherwise be first raised during the course of the hearing.
2. Inform individuals filing answers or appeals with SPB of those specific matters that must be contained within the answer or appeal, and notifying individuals that any affirmative defense or request for relief that is not set forth in the answer or appeal shall be deemed waived, unless an amended answer or appeal is filed in accordance with SPB rule.

**IMPACT ON SMALL BUSINESSES:**

The proposed regulations will not impact small businesses. The proposed adoption would affect only State agencies and their employees.

**LOCAL MANDATE:**

This action has no mandate upon local agencies or school districts and, therefore, requires no reimbursement pursuant to GC § 17561.

**COST ESTIMATES OF PROPOSED ACTION:**

**Costs or Saving to State Agencies**

Any additional costs or savings that the proposed adoption may cause for state and applicable local agencies will be negligible.

**Impact on Housing Costs**

The proposal will not affect housing costs.

**Costs or Savings in Federal Funding to the State**

No impact.

**Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

The proposals do not impose nondiscretionary costs or savings on local agencies.

**Cost Impact on Representative Private Persons or Businesses**

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed actions.

**ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:**

SPB has determined that the proposed action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:**

The proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

**DETERMINATION:**

SPB must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SPB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

**FINAL STATEMENT OF REASONS:**

Upon completion, copies of the Final Statement of Reasons for the proposal may be obtained from the contact person.

**ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEB SITE:**

The text of the proposed adoption in underline, as well as the Notice of Proposed Adoption of Regulation and Statement of Reasons, will be on SPB's Web site at [www.spb.ca.gov](http://www.spb.ca.gov).

**STATEMENT OF REASONS:**

California's Civil Service Act authorizes SPB to conduct hearings or investigations concerning all matters related to the enforcement of the Civil

Service Act. Specific provisions of the Civil Service Act also permit State employees or applicants for State employment to file answers or appeals with SPB, requesting that SPB conduct a hearing or investigation concerning employment actions taken against the employee or applicant. Those statutory provisions authorizing the employee or applicant to file an answer or appeal with SPB do not specify what information must be contained within the answer or appeal and, as a general rule, most employees or applicants file a very general statement of appeal requesting an investigation or hearing, without specifying any affirmative defenses or requests for relief that the employee or applicant intends to raise during the course of the investigation or hearing.

It is often only after the investigation or hearing has commenced that the employee or applicant notifies the responding party of the specific affirmative defenses or requests for relief that the employee or applicant intends to put at issue during the investigation or hearing. It has been SPB's experience that, once notified of those specific issues and in order to prepare a defense as to those issues, the responding party often requests a continuance of the proceedings in order to conduct discovery concerning those issues.

Since due process and fundamental principles of fairness usually dictate that the responding party be afforded an opportunity to defend itself against those allegations, just as the employee or applicant was afforded an opportunity to conduct discovery in order to defend himself or herself against the allegations made by the responding party, SPB often finds itself in the position of granting continuances in order that such discovery can be conducted. This in turn prolongs the hearing or investigation and serves to ensure that the controversy will not be resolved in as timely a manner as might otherwise be possible.

As a result of the foregoing, and in part to reflect SPB's response to public comments regarding a previous proposal to adopt new § 63 that was heard before the Board on May 7, 2002, SPB proposes to require that answers or appeals filed with SPB, requesting a hearing or investigation be conducted by SPB, notify the responding party of all affirmative defenses and requests for relief that the employee or applicant intends to raise during the course of the hearing or investigation. This initial notice will serve to better frame the issues of the hearing or investigation, and will enable timely discovery to be conducted, thereby reducing or eliminating the need for continuances to be granted after a hearing or investigation has already commenced.

This proposal also provides a safety valve, permitting employees or applicants to file an amended answer or appeal to include additional affirmative defenses or requests for relief, if the employee or applicant lacked sufficient information to determine that the additional affirmative defense or request for relief would have been appropriate at the time that the initial answer or appeal was filed.

The proposed regulation will serve to:

1. Expedite the hearing or investigation process by timely notifying all parties to the hearing or investigation of all issues that will be presented during the course of the hearing or investigation, so that timely discovery can be conducted, thereby reducing or eliminating the need for continuances to be granted in the case as the result of affirmative defenses or requests for relief that would otherwise be first raised during the course of the hearing.
2. Inform individuals filing answers or appeals with SPB of those specific matters that must be contained within the answer or appeal.

Mike Willihnganz  
Chief, Policy Division

Attachment: Text of Proposed Regulation Adoption

Regulation Governing Answers or Appeals Filed with the State Personnel Board

**For this adoption, text added to the regulation is indicated by underline.**

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

**§ 63. Answers or Appeals Filed with the Board.**

(a) Each answer or appeal filed with the Board concerning any evidentiary hearing assigned to a Board administrative law judge, including, but not limited to, answers or appeals regarding Notices of Adverse Action (Government Code Sections 19575 and 19590); Notices of Rejection During Probationary Period (Government Code Section 19175); Notices of Medical Action (Government Code Section 19253.5); and Notices of Non-Punitive Action (Government Code Section 19585), shall be filed with the Board within the time period prescribed by statute or Board rule.

(b) Each answer or appeal shall be written and shall set forth each affirmative defense the appellant believes to be applicable to his or her case, and all specific relief, including compensatory damages, that the appellant is seeking.

(c) If an affirmative defense is not raised in the original answer or appeal, the answer or appeal may be amended to assert such an affirmative defense. Any such amended answer or appeal shall be filed with the Board and served upon all respondents not less than 15 days before the date set for commencement of the hearing. The administrative law judge may accept a later-filed amendment only upon showing of good cause for the late filing. Any named respondent may request a continuance of the hearing in order to prepare a response to any newly asserted affirmative defense and conduct discovery, if necessary. The appellant shall be deemed to have waived time for purposes of Government Code Section 18671.1 and



for purposes of calculating any award of back pay and benefits, that might otherwise accrue during the period of the continuance.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections, 18670, 18703, 19175, 19253.5, 19575, 19585 and 19590, Government Code.